

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,
v.
AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*,

Defendants.

Civil Action No. 3:17-01362
Hon. David A. Faber

CABELL COUNTY COMMISSION,

Plaintiff,
v.
AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*,
Defendants.

Civil Action No. 3:17-01665
Hon. David A. Faber

**ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL
AMERISOURCEBERGEN DRUG CORPORATION**

The Special Master has reviewed the Plaintiffs' Motion, the Defendant's Response, Plaintiffs' Reply and all attachments and after consideration Plaintiffs' Motion to Compel AmerisourceBergen Drug Corporation ("ABDC") to Identify by Bates Range Due Diligence Documents for CT2 Customers (ECF No. 681) is hereby GRANTED.

As a threshold matter Defendant argues that Plaintiffs' motion is untimely, and Plaintiffs' were obligated to file a placeholder motion to preserve the claim for relief. While this rule has

been applied to other motions in this case, Plaintiffs' instant motion does not seek new relief but rather compliance with a prior order in which the requested relief was granted. To preclude a party to request compliance with previously granted relief would be unjust especially in a case in which rolling production of documents is commonplace. Therefore, the Motion will be considered on the merits.

After review, the Defendant's argument that the documents were "produced in a searchable format and Plaintiffs' can easily search the document" (Defendant's Response p.8) is not in compliance with the previously ordered relief.

The Special Master finds that ABDC has not adequately responded to Plaintiffs' Combined Discovery Request No. 4 nor have they complied with Discovery Ruling No. 2 (ECF No. 273). The Special Master finds ABDC must comply with Discovery Ruling No. 2 and identify all due diligence related to its Huntington/Cabell County customers, including those found in custodial files and must identify correlating Bates ranges. Because ABDC has been aware of its obligation since April 2, 2020, it must identify any additional Bates ranges, or certify that no additional responsive documents exist by August 10th, 2020.

ENTERED: July 28, 2020

Christopher C. Wilkes
Special Master